veyed to a third person, who had agreed to hold title as a matter of accommodation to vendor, demurrer to the evidence, on the ground that vendor "has never offered to defendant any deed from the true owner thereof," held insufficient, under Code, § 6117, requiring ground of demurrer to be specifically stated in writing, in that it could have had any one of three meanings, that vendor had never offered the purchaser any deed either from himself, or from grantors who conveyed to third person, or from third person.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 494.]

3. Trial (§ 154*)—Statute Requiring Grounds of Demurrer to Evidence to Be Stated in Writing Is Mandatory.—Code, § 6117, requiring grounds of demurrer to the evidence to be stated in writing, is madatory, and the court is without jurisdiction to consider such demurrer, unless the grounds are so stated, whether there are one or more grounds of demurrer, and although the grounds are known to and understood by the demurree.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 494.]

4. Trial (§ 154*)—Demurrer Embracing More than One Ground, without Particular Ground Being Specifically Relied on, Is Insufficient.—Where the ground or grounds of demurrer to the evidence stated in the trial court are broad enough, when considered in the light of the facts and circumstances of the case, to embrace more than one ground, and no particular ground or grounds is or are specifically stated as relied on, the demurrer is insufficient, under Code § 6117, requiring the grounds to be stated in writing.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 494.]

Error to Circuit Court of City of Norfolk.

Action by notice of motion by W. T. Daughtry against William George Black. Judgment for plaintiff, and defendant brings error. Affirmed.

Tomlin & Maupin, of Norfolk, for plaintiff.
Jas. G. Martin, of Norfolk, for defendant.

ELLISON *v.* COMMONWEALTH.

June 16, 1921.

[107 S. E. 697.]

1. Witnesses (§ 389*)—Witness on Cross-Examination Admitting Making Contradictory Statement in Writing, Writing Need Not Be Introduced.—Under Code 1919, § 6216, allowing a witness for purpose of contradiction to be cross-examined as to previous statements made by him in writing, without the writing being shown to him,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and only requiring it to be shown to him if he denies making it, his attention being called to statements contradictory of his testimony in affidavits previously made by him, and he admitting making the affidavits, the party cross-examining need not offer them in evidence.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 967.]

2. Witnesses (§ 392 (2)*)—Commonwealth May Not Introduce Incompetent Affidavits as to Contradictory Statement, in Which Defendant Merely Cross-Examined Witness.—Code 1919, § 6216, which allows a witness for purpose of contradiction to be cross-examined as to previous statements made by him in writing, without the writing being shown to him, and on his admitting the making of it does not require the party cross-examining to offer the writing in evidence, by the further provision, "But it shall be competent for the court at any time during the trial to require the production of the writing for its inspection, and the court may thereupon make such use of it for the purposes of the trial as it may think best," means legitimate use, and does not per se render admissible in evidence a writing which independently of such section would be inadmissible; and so it was error to allow the commonwealth to read to the jury the whole of affidavits of witness containing the inconsistent statements, they not being substantive evidence, but hearsay, and defendant, cross-examiner, not having put in evidence any part of the affidavits.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 966.]

3. Criminal Law (§ 1170½ (1)*)—Witnesses (§ 289*)—Commonwealth's Redirect Examination Held Irrelevant and Immaterial, but Harmless.—Witness for commonwealth, on a prosecution for breaking and stealing from a car, having testified that he and defendant started out to get some brass which witness had, its questions to him on redirect examination as to where and how he got the brass were irrelevant and immaterial, but harmless

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 962, 963.]

4. Criminal Law (§ 772 (3)*)—Instruction Should Not Refer to Indictment for Acts.—An instruction, instead of stating that if the jury believe that the case of shoes alleged to have been stolen was removed from a freight car in the railroad yards, "as alleged in the indictment," should have stated the acts done by defendant.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 715.]

5. Criminal Law (§ 792 (1)*)—Instruction Should Not Leave to Jury's Judgment What Constitutes Aiding and Abetting.—Instruction should not leave to jury's judgment what constituted aiding and abetting, or how defendant's mere presence could have involved him in the commission of a crime.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 716, 717.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Criminal Law (§ 800 (1)*)—Instruction Should Define the Word "Inciting."—It would be better for an instruction to give the jury some idea of what constituted "inciting," where it uses the term.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 716, 717.]

7. Burglary (§ 28 (1)*)—Conviction Not Authorized on Evidence of Receiving Stolen Goods.—Under indictment charging defendant as principal with breaking and entering and stealing from a car, there can be no conviction if the evidence simply shows receiving stolen goods, knowing them to have been stolen.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 661.]

8. Criminal Law § 792 (3)*)—Instruction Should State Acts Necessary to Constitute Principal.—The indictment charging defendant as principal, the instruction should point out plainly what acts or conduct of defendant were necessary to constitute him a principal.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 715.]

Appeal from Circuit Court, Arlington County.

Edward Ellison was convicted of breaking, entering, and stealing from a car, and appeals. Reversed.

Henry E. Davis and *Crandal Mackey,* both of Washington, D. C., for appellant.

John R. Saunders, Atty. Gen., and *J. D. Hank, Jr.,* and *Leon M. Bazile, Assts. Atty. Gen.,* for the Commonwealth.

HENDERSON *v.* COMMONWEALTH.

June 16, 1921.

[107 S. E. 700.]

1. Poisons (§ 9*)—Evidence Held Insufficient to Sustain a Conviction of Unlawful Possession of Certain Drugs.—In a prosecution for the unlawful possession of cocaine and similar drugs, evidence held insufficient to sustain the conviction.

2. Poisons (§ 9*)—Evidence of Defendant's Ownership of Houses and Money Held Not to Warrant Inference that He Was Unlawfully Selling Drugs.—In a prosecution for unlawful possession of drugs, the fact that accused had not recently been at work, but owned several houses, and appeared to have considerable money, held not to warrant an inference that he had acquired the property through the unlawful sale of such drugs, in view of testimony as to his former business.

3. Poisons (§ 9*)—Possession of Forbidden Drugs, to Be Prima Facie Evidence of Intent to Sell, Must Be Exclusive.—Code 1919, § 1697, making possession of cocaine with certain exceptions prima

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.